HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

1. D.B. Special Appeal Writ No.1004/2015

Rajendra Kumar Khandelwal Son of Shri Radhey Shyam Gupta, aged about 41 years, Sub Inspector of Police, posted at Police Commissionerate, Jaipur

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

2. D.B. Special Appeal Writ No.665/2015

Mukesh Sharma Son of Shri Mahaveer Prasad Sharma at present posted as Sub-inspector CID (IB)

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

3. D.B. Special Appeal Writ No.667/2015

Satya Narayan Sub Inspector of Police, Son of Shri Mani Ram Jat Presently (under suspension) Police Lines, Bikaner, aged about 39 years, Jaipur

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

4. D.B. Special Appeal Writ No.692/2015

Sunita Gurjar D/o Shri Bane Singh Kasana presently working as Sub Inspector, aged about 38 years, District Bhilwara

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

5. D.B. Special Appeal Writ No.693/2015

Surya Veer Singh S/o Shri Sohan Singh Charan presently working as Sub Inspector, CID, aged about 41 years, SSB, Udaipur

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

6. D.B. Special Appeal Writ No.694/2015

Rohit Srivastava Son of Shri C.B. Srivastava presently working as Sub Inspector of Police, CID, aged about 41 years, SSB, Jaipur

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

7. D.B. Special Appeal Writ No.695/2015

Shilpa Bhadviya D/o Shri Maharaj Singh, presently working as Sub Inspector of Police, CID, SSB, Jaipur

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

8. D.B. Special Appeal Writ No.696/2015

Sanjiv Chauhan Son of Shri Om Prakash presently working as Sub Inspector of Police, CID, SSB, Jaipur

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

9. D.B. Special Appeal Writ No.829/2015

Shivraj Singh Son of Shri Ashudan Singh Charan, Sub Inspector P.S. Ramganj, aged about 39 Years, 185C Ganesh Nagar, P.S. Kardhani, Kalwar Road, Jaipur

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

10. D.B. Special Appeal Writ No.831/2015

Kuldeep Singh Son of Shri Hari Singh Charan, S.I. District Bikaner, aged about 34 years, Village Charanvas, P.S. Govindgarh, Distt. Jaipur

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

11. D.B. Special Appeal Writ No.1003/2015

Kamal Nayan Moyal, Sub Inspector of Police, Jaipur

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

12. D.B. Special Appeal Writ No.1005/2015

Sanjeev Kumar, Sub Inspector of Police Jaipur City

----Appellant

Versus

1. Director General of Police, Rajasthan, Jaipur
2. Inspector General of Police, CID (CB), Rajasthan, Jaipur

–----Respondents

For Appellants : Mr. M.M. Mehrishi
Mr. Anand Sharma
Mr. Shobhit Tiwari

For Respondents : Mr. Rajendra Prasad AAG assisted by
Mr. Madhu Sudan Sheromani Sharma &
Mr. Ashish Sharma

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

JUDGMENT

Date of Reserve : 24/05/2017

Date of Pronouncement : 30/05/2017

Per Hon'ble The Chief Justice:

1. 38 appeals filed by Sub-Inspectors before the Rajasthan Civil Services Appellate Tribunal Jaipur were decided by a common order dated 29/11/2013 for the reason the factual matrix of the appeals was the same. Against the decision of the Tribunal, DGP Police and some effected candidates filed 41 writ petitions in this Court which were disposed of by the learned Single Judge vide impugned-order dated 26/05/2015. Above captioned 12 appeals have been filed by some of the candidates who were the appellants before the Tribunal. In 10 appeals arguments were heard and judgment was reserved on 24/05/2017. Thereafter, 2 more appeals were listed before us. Counsel stated that the arguments advanced on 24/05/2017 be taken as the arguments in the said two appeals as well. Thus, 12 appeals are being decided by us by a common order.

2. A legal issue concerning interpretation of para (a) of sub-rule (1) of Rule 10 of the Rajasthan Police Subordinate Service Rules, 1989 arises for consideration. Rule 10(1)(a) reads as under:-

> "**10. Determination of Vacancies**.-(1)(a) Subject to the provisions of these Rules, the Appointing Authority shall determine on 1st April every year, the actual number of vacancies likely to occur during the financial year."

3. The view taken by the Tribunal is that if for the promotional post in question, for further promotion therefrom vacancies pertaining to a financial year are determined and the process of promotion is initiated, for the purpose of the lower post, these vacancies would be required to be treated as likely to occur during the financial year, and thus must be included as the vacancies purposes to be filled up. Differing with the view taken by the Tribunal, the learned Single Judge has, placing emphasis on the word "*actual*", has held that unless further promotions are effected, the vacancies cannot be included for the post in question.

4. The factual backdrop of the controversy is that the police service in the State of Rajasthan comprises a cadre as per which the post of Inspector is below the post of RFS (Junior Scale). Below the post of Inspector is the post of Sub-Inspector. Posts of Inspector are to be filled 100% by promotion from eligible Sub-Inspectors. For the vacancy year 2009-10, on 22/10/2009, 40 promotions were made to RPS (Junior Scale). Thus 40 vacancies resulted in the post of Inspector. Concededly, these vacancies were not taken into account when on 23/05/2013 a DPC was constituted to fill up only 88 posts of Inspectors. On 12/06/2013, 128

promotions were made to the post of RPS (Junior Scale) against the vacancies for the years 2010-11, 2011-12 and 2012-13.

5. It is an admitted fact that DGP Police had, on 26/10/2012, initiated the process of identifying vacant posts which had already fallen vacant in the post of RFS (Junior Scale) for the year 2010-11. On 07/12/2012 same process had been initiated for the vacancy year 2011-12 and on 09/04/2013 same process had been initiated for the vacancy year 2012-13. On 17/04/2013, much before the DPC was held to effect promotion to post of Inspector from the post of Sub-Inspector, 43 vacancies resulting in promotion to RFS (Senior Scale) for the year 2010-11, 30 for the year 2011-12 and 55 for the vacancy year 2012-13 had been determined. In other words, these vacancies were known to the Police Department as also the Home Department of the State of Rajasthan as likely to occur for the post of Inspector for the said three years.

6. A caveat needs to be lodged at this stage. Information given to Sub Inspectors under Right to Information Act by the Home Department has given varied and different figures for the vacancies which were likely to arise in the post of Inspector keeping in view the further likely promotions. To some Sub Inspectors it was informed that for the vacancy year 2009-10, there were 87 vacancies, for the year 2010-11, there were 148 vacancies, for the year 2011-12, there were 297 vacancies and for the year 2012-13, there were 264 vacancies. To some information provided was that for the vacancy year 2010-11, 43 vacancies, for the vacancy year 2011-12, 30 vacancies and for the vacancy year 2012-13, 55 vacancies would be available. To some information

provided was that for the vacancy year 2010-11, 43 vacancies were available, for the year 2011-12, 309 vacancies were available and for the year 2012-13, 55 vacancies were available.

7. The Tribunal has therefore rightly opined that there is utter confusion in the Police Department and the Home Department in the State of Rajasthan.

8. Be that as it may, we are not concerned with the factual aspect of the data for the reason the Tribunal and the learned Single Judge have directed the vacancies to be determined with precession.

9. The difference between the view taken by the Tribunal and the learned Single Judge is that whereas the Tribunal has held that on account of further promotion to the post of RPS (Junior Scale) vacancies to the post of Inspector which were ascertainable and would have fallen vacant were to be treated as "*vacancies likely to occur in the financial year*" and thus, the exercise for promotion be re done keeping in view the vacancies for each year of the vacancy. For otherwise, persons not eligible in the year of vacancy would become eligible and if promoted the seniority would be effected. As noted above, laying emphasis on the word "*actual*" in the rule, the learned Single Judge has held that unless further promotions to the post of RPS (Junior Scale) are made, vacancies to the post of Inspector cannot be included.

10. Whereas the Tribunal has laid emphasis on the fact that before the promotion exercise to promote Sub-Inspectors to the post of Inspector was undertaken, the department had simultaneously initiated the process to effect promotion to the post

of RPS (Junior Scale) and by 17/04/2013 had determined the vacancies which would ensure upon further promotion to the post of RFS (Junior Scale) for the years 2010-11, 2011-12 & 2012-13. 43, 33 and 55 vacancies ensuing had been worked out.

11. At the hearing of the appeals, learned counsel requested the court to decide the question of law for the reason the Tribunal and the learned Single Judge have directed the department to correctly determine the vacancy position for the years in question. The only difference being, whereas the Tribunal has interpreted the rule requiring the exercise to be carried out for the vacancy years in question, as per the learned Single Judge the posts have not be filled up for the vacancy years in question on account of the fact that actual promotions to the post of RPS (Junior Scale) were made later on. (A finding of fact which is incorrect).

12. The phrase "*the actual number of vacancies likely to occur during the financial year*" has to be given a meaning.

13. Whereas, the State argues that the word "*actual*" means that as a matter of fact, on account of promotion, vacancy should arise. The respondents urged that the word "*actual*" must take its colour from the words "*likely to occur*", meaning thereby, if it is ascertainable with certainty that a vacancy will arise, it would be treated as the actual vacancy likely to occur.

14. The word "*likely*" means "might well happen or be or prove true, or turn out to be the thing specified, probable".

15. The word "probable" in turn means that "may be expected to happen or prove true, or likely. Thus, we are of the considered view that the phrase "*likely to arise*" must impart colour

to the word "*actual*" in the rule in question. The resultant position would be that vacancies as a result of promotion of incumbents to the higher post in service in a given year would be required to be treated as vacancies likely to occur in the year in question. More particularly when the exercise to fill up further promotional posts has already been undertaken. The number of further promotional posts have been ascertained. It would thus be known that number of ascertained further promotional posts would be filled up resulting in vacancies in the feeder post, which in turn would mean that for the next below post the vacancy position for promotion is known.

16. To give an example. Promotion has to be made from Posts A to B. From Post B further promotion has to be made to Post C. The year in question is 2010-11. If ascertained vacancies for the year in question are known for the Post B and promotion exercise to fill up the vacancies by considering eligible candidates holding Post A is put into motion, for promotion from Post C to Post B, vacancy position in Post B on account of promotions to be made would be known.

17. The view which we have taken conforms to the law declared by the Supreme Court in the decision reported as **(2001) 10 SCC 237 : Sri Kant Tripathi and others Vs. State of U.P. and others.** The expression "*vacancies likely to occur*" in the applicable service rule was considered by the Supreme Court. Overruling the view taken by the High Court that vacancies on account of death, compulsory retirement, voluntary retirement, removal, dismissal and appointment of higher judicial officers as

Judges of the High Court would also come within the expression "*vacancies likely to occur*", the Supreme Court held that this concept is wholly unsustainable inasmuch as, nobody can anticipate the number of such posts. But Supreme Court clarified that the expression 'likely to occur' obviously mean "*vacancies*" which in all probability would occur. Death, compulsory retirement, voluntary retirement, removal, dismissal and appointment of a member of Higher Judicial Service as a Judge of the High Court are not ascertained events. But anticipated vacancies on account of promotion is a certain event because the department has the data with it to know how many persons would be promoted in the financial year. The very purpose of the rule to determine the anticipated vacancies on the 1st day of April of the financial year is to ensure that the posts do not lie vacant. As to why the exercise has to be carried out prior to the 1st day of April each year and by the 1st day of April each year the vacant posts with reference to anticipated vacancies has to be ascertained.

18. In the instant case, admittedly on 12/06/2013, promotions from the post of Inspector to the post of RPS (Junior Scale) for the vacancy years 2010-11, 2011-12 and 2012-13 were effected. This was pursuant to the information made available pursuant to the letters dated 26/10/2012, 07/12/2012 and 09/04/2013. 43, 30 and 50 vacancies, respectively in the post of RPS (Junior Scale) had been identified. On 12/06/2013, promotion from the post of Inspector to that of RPS (Junior Scale) were effected in which, 43, 30 and 50 Inspectors for the respective years were promoted. The promotion order for the post of

Inspector from the post of Sub-Inspector was issued on 01/08/2013.

19. Overruling the view taken by the learned Single Judge that anticipated vacancies would mean the actual vacancies, we affirm the view taken by the Tribunal that anticipated vacancies would include such vacancies which have been determined on account of further promotions to be made. We emphasis once again that in the instant case, further promotional posts which would become vacant upon promotion of officers in RPS (Junior Scale) was already known to the department before the 1st day of April and thus, said resultant vacancies upon promotion to the post of RPS (Junior Scale) were known. Therefore, it was already ascertained that said number of posts of Inspectors had become vacant. These posts had to be treated as "*likely to be filled up*" from the post of Sub-Inspectors to the post of Inspectors.

20. The appeals are allowed. Impugned decision dated 26/05/2015 is set-aside. Decision dated 29/11/2013 pronounced by the Tribunal is restored.

21. No costs.

(SANJEEV PRAKASH SHARMA)J. (PRADEEP NANDRAJOG)C.J.

Anil Goyal-PS